2: Krige and Krige E-5 (1928-1939) 1943
FX14 Lovedu FX14

CHAPTER XI

THE GENIUS OF JURIDICAL ADJUSTMENTS

Conciliation machinery at the capital—quasi-judicial systems of appeasement—reliance in full-dress trials and sanctions upon agreement and compromise—procedure in 'blood' cases—appeals to ordeals and diviners.

692 671 THE genius of the Lovedu political system is its network of reciprocities; the genius of the legal system is its procedure of reconciliations and compromises; and both the political and legal systems reflect the main emphases and purposes of the culture. *Khotso* proceedings, the full-dress trials of the Lovedu, stand out conspicuously amid the various judicial arrangements, some of which we may be inclined to call quasi-judicial, but in reality none of our legal terms are appropriate. Their *khotso* is court-like, but it is not a court in our sense of the term; their law is law-like, not the equivalent of our law. All the procedures aim, not at settling legal issues, but at effecting compromises and reconciliations. The *khotso* itself, the most imposing feature of public life and the pinnacle of the cultural edifice, relies, not on force, but on friendly adjustments. It is the courtyard of compromises, not the arena of casuistic contests. It disposes of no sanction of execution: coercion is incongruous with its purposes. Culture contact has weakened the effectiveness of compromise and thereby has rendered necessary what it denies to the *khotso*—namely, the sanction of force.

692 In this chapter we deal briefly with the organization of the *khotso* and then touch lightly upon certain quasi-judical processes. These lead us to cast a passing glance first at *khotso* procedure and thereafter at various other types of procedure which centre, not in the *khotso*, but in other arrangements such as those involved in settling 'blood' cases and in dealing with the deeds of darkness by divination and the ordeal. All these procedures are part of the legal machinery, but they can be understood only as part also of the whole social structure. A comprehensive account of them is out of the question; we have no time even for a glimpse at substantive law.

692 643 The queen is at the head of the *khotso* organization. She never sits in the *khotso*, for it is the courtyard of the men. But she is always in the background, and in theory all decisions at the capital should be reported to, and confirmed by her. Five years ago, when the queen's uterine brother still lived and was a councillor, this was no formality, but to-day only very serious cases or decisions are submitted for her verdict or confirmation. This divergence from the ideal is due to conflicts, fear of involving the queen with European authorities, and a growing desire to reserve *khotso* affairs to the men. The queen's approval is still sought, always when the dispute involves the position or status of a royal relative, often when a district head expels a subject, and sometimes when a recalcitrant party is to be sent to the Native Commissioner or when one

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

yard, where they may more freely advance personal considerations, the *khotso* goes on to the next case. After plaintiff and defendant have spoken, the discussion may become general and heated, or it may peter out or degenerate to *ad hoc* arguments in various quarters, and no crisp decision may be given. There are many interruptions. Yet the men say that *khotso* work is arduous and requires much concentration—clearly their conceptions are very different from ours. They attach great importance to impartial justice, and bribery in our sense is rare. The danger of partiality arises from relationship and friendship; arbitrators do not recuse themselves, but often show their embarrassment by silence or slipping out of the *khotso*. We have seen cases in which a district head was fined by his own *khotso* for assaulting one of the residents of his district. Even the queen may be judged (in private) by her retinue, the nobles (*Varamuhafulwa gi valada*).

The problem of the *khotso* lies, not in sifting evidence or dispensing justice according to law, but in adjusting personal differences within the general framework of the social structure. Success is achieved when personality compromises can be harmonized with the implications of the social system. The *khotso* is not much concerned with strict law or the details of law. They do not rely upon judicial precedents for authoritative legal material. If precedents are quoted, and that is exceedingly rare, their purpose is to suggest arrangements and adjustments that are effective, not to determine a legal rule. The law is not the law of the courts; it is the 'law' of the institutions and is embedded in the institutions; and the harmony of different institutions and their 'laws' results from the total cultural configuration, not the judgements of the *khotso*. If the arrangements or 'laws' of two institutions conflict in a case, as they sometimes do, the *khotso* is powerless to resolve the conflict; for law is not of an autonomous order.

We cannot speak of examination, much less of cross-examination, of witnesses. All the parties are present when evidence is given, for 'Only Europeans conceal what one says from another and allow secret manipulations of evidence behind the backs of others'. The foreknowledge of the *khotso*, the availability of the weapons of confrontation and publicity, reduces direct perjury to a minimum. Litigants know the art of presenting their cases and of skilfully twisting a story, but a man caught out in telling an untruth readily confesses the truth. Falsehood is dealt with by ridicule and laughter; it is not punished as perjury. There are no rules as to what may be admitted as evidence, but the probative value of different kinds of evidence is well understood. The evidence need not bear upon the issue presented to the court, for that issue may merely reflect a more fundamental conflict, and it is with this conflict and its resolution that the *khotso* is concerned. Hearsay and irrelevancies may furnish important clues as to the origin or nature of the dispute. Rigid proof is necessary when elementary facts are in issue, as when the sole question is how many cattle have to be returned upon divorce, and then reliance is placed upon the evidence of the two marriage intermediaries. In theft and adultery cases, despite presumptions that supplement the evidence of the senses, the *khotso* is peculiarly helpless and extra-*khotso* procedures must be invoked.

4: Krige and Krige E-5 (1928-1939)1954
FX14 Lovedu FX14

attached to possession and no socio-economic stratification of classes; for a great man, whether he be poor or rich, is first and foremost a royal relative, and the purpose of economic activities is self-sufficiency and independence. Trade is disliked and competition is absent even in craftsmanship. So marked is the disinclination to make comparisons that it is difficult to obtain any expression of opinion concerning the relative merits of things that Europeans quite naturally compare, such as the achievements of individuals or objects of craftsmanship.

Children are taught 'to be like others', not to strive to outdo them and precociousness is disliked. A child asking for sweets often says 'Give me also', even if no one else has been given any on that occasion. He begs for what others may receive, not a special advantage for himself. When favours are asked from the ancestors the prayer is quite often phrased, 'Give us also', or 'Let him have health like others'. To stress, before the ancestors, a desire for personal achievement in competition with or greater than that of others would be improper. Contrast with this the opportunities for and love of competition in Zulu society where every boy is constantly measuring himself against others, vieing with them in fights, in dress, in love-making, in dancing, for leadership and praise.

The give and take, absence of competitiveness, and lack of force in the social and political structure, make moderation the keynote of Lovedu social life. Outstanding individuals are not tolerated: a show of forcefulness on the part of a councillor one day, which appealed to us as an indication of efficiency unusual in the society, was apologized for with the excuse that he must have been drunk. Display of all kinds is disliked. The elaborate beadwork and interest in dress, so characteristic of the Zulu, are absent, and there is nothing to correspond to the institutionalized public boasting (*ukugiya*) —jumping and stabbing at an imaginary foe to the accompaniment of a string of praises—that plays so important a role in Zulu life.

Excess of every kind is deprecated. Speed is undignified. Things must be done *ga raya*, slowly, at a regular pace, in a moderate and dignified manner. Excess in human relations, like heat in the cosmic order, is liable to bring disaster. The reaction to death is calm, quiet grief, not the funeral wail of the Nguni or the terror reaction of the Tsonga. Too much weeping by a mother is believed to call down evil upon the next child born to her. Mputa was born a cripple, because, so we were told, his mother, Makwadu, wept bitterly at the death of her first son. Even in scolding moderation has to be observed, for scolding out of proportion to the offence, can, as we have shown, bring evil, even death.

Quarrelsomeness is one of the worst offences. Congruent with this outlook, the murderer or the warrior who has killed an enemy must purify himself to avoid becoming quarrelsome, the threat of which is so unpalatable as to be a powerful sanction. But quarrels and conflicts do occur on account of temperamental qualities, conflicting interests, and other causes; they are also precipitated sometimes through imperfections in the social

4: Krige and Krige E-5 (1928-1939)1954
FX14 Lovedu FX14

institutions or their inadequacy for meeting all situations. In the resolution of difficulties of this nature arbitration and compromise play an important role, both judicially and extra-judicially. The genius of the legal system even in its most formal aspects is the skilful use of the restitutive sanction, in its spiritual rather than its material sense. The fundamental objective is the re-establishment of relations that have become broken or strained, and that objective is achieved, not so much by vindicating rules as by reconciling the parties. There is indeed a tacit assumption that the social equilibrium will be maintained if personal relations are suitably adjusted. The primary task of the courts is therefore to smooth out personal difficulties rather than to settle legal issues. For in law as in life it is not the rule that is important but the personal and social relations. The cattle-linking of brother and sister from different 'houses', ordinarily disapproved, is an arrangement that agreement between the 'houses' makes possible, and if the parties agree, even murder can be compounded. Even when a diviner has found a man guilty of witchcraft, it is felt to be necessary that the culprit should 'agree' with the findings, i.e. accept the verdict of the bones. In judicial proceedings a defendant will be asked if he agrees to pay the award; if he disagrees, full latitude is allowed him to expostulate. Should the court sense a genuine grievance it will reopen the case and bring its decision more into line with an amicable adjustment. As laws and institutions exist for human beings, they are not ends in themselves, and even the most fundamental duties and obligations between individuals and groups are conditional upon the ever-invoked 'if they agree'. If people do not agree there can be no relationship. If they have to be coerced there cannot be genuine agreement. This is why the execution of a judgement is left to the parties. The whole social and political structure relies upon the maintenance of good relations without resort to compulsion. Hence the use of the mechanisms of marriage and bride-price to hold in willing allegiance a great diversity of alien groups, who outnumber the Lovedu proper by nine to one; hence also the aversion from regimentation and military discipline.

Great importance is attached to the dignity of the individual. Every person has rights and obligations; even a child's rights to property are respected. If a man feels that he is not being given his due, it is right to complain (*velacla*) just as the ancestors do when they have not received proper attention. Any indignity to the personality, such as corporal punishment, is socially disapproved. Perhaps it is for this reason that a Lovedu soon becomes tractable if ordered by the court to carry stones or perform some other useless task when he has been guilty of 'despising' the court.

Suicide is not common, but when it is resorted to it is as a protest against wrongful accusations or as a result of the complete frustration of an individual forced against his will into an impossible situation, e.g. a girl forced to marry someone she dislikes.

A high value is placed on human life. An aspect of Western civilization that puzzles the Lovedu is that we tolerate the loss of human life involved